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UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

ORDER SERIES--ORDER NO. 1

ORDER
REGULATING THE HANDLING OF WALNUTS
GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

Order Issued by the Secretary of Agriculture
October 11, 1935

Effective 12:01 a.m., E.S.T., October 15, 1935

ORDER
REGULATING THE HANDLING OF WALNUTS
GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

WHEREAS, it is provided in Section 8c of the Agricultural Adjustment Act approved May 12, 1933, as amended (hereinafter called the Act), as follows:

"(1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof."

And

WHEREAS, the Secretary of Agriculture, having reason to believe that the issuance of an order would tend to effectuate the declared policy of Title I of the Act with respect to walnuts grown in the States of California, Oregon and Washington, did, on the 5th day of September, 1935, give notice of hearings to be held at Portland, Oregon, on September 20, 1935, and at Berkeley, California, on September 23, 1935, on a proposed order regulating the handling of walnuts grown in California, Oregon and Washington, and did upon said dates and at said places conduct public hearings thereon and gave due opportunity to all interested parties to be heard concerning the said proposed order;

And

WHEREAS, the Secretary has found and proclaimed that the purchasing power of walnuts grown in the States of California, Oregon and Washington during the period August 1909 - July 1914 can not be satisfactorily determined from available statistics of the Department of Agriculture, but that the purchasing power of said walnuts can be satisfactorily determined from available statistics of the Department of Agriculture for the period August 1919 - July 1929, which period August 1919 - July 1929 is declared to be the base period to be used in connection with this Order in determining the purchasing power of said walnuts; and

WHEREAS, due notice and opportunity for hearing with respect to this Order have been afforded pursuant to the provisions of the Act and the Regulations issued thereunder; and

WHEREAS, the Secretary finds upon the evidence introduced at said hearing and the record thereof:

1. That more than ninety percent (90%) of the merchantable walnuts grown in California, Oregon and Washington enter into the current of interstate and foreign commerce, and that the handling of walnuts grown in California, Oregon and Washington is in the current of interstate and foreign commerce and directly burdens, obstructs, and affects interstate and foreign commerce in said commodity;

2. That, on the basis of conditions existing at the date hereof and at the time of said hearing, in order to give said commodity a purchasing power with respect to articles that farmers buy equivalent to the average purchasing power of said commodity in said base period it is necessary that the average price to farmers for such commodity be seventeen cents (17¢) per pound;

3. That the average price to farmers for said commodity, at the time of said hearing and for a long time prior thereto, was not more than seventy percent (70%) of the price necessary to give a purchasing power to such commodity equivalent to the purchasing power of such commodity during the base period;

4. That, for a long time prior to said hearing, the prices received by producers of said commodity were at a level that gave such commodity a purchasing power with respect to articles that farmers buy greatly below the purchasing power of such commodity in said base period;

5. That the aforesaid low level of prices has, in a large measure, resulted from the production of more walnuts than could be disposed of at a higher level of prices;

6. That a surplus exists in the quantity of walnuts produced during the current year;

7. That the amount of merchantable walnuts produced and to be harvested during the current year will be not less than eighty-three million (83,000,000) pounds, and that the greatest total return to growers of walnuts will be obtained by limiting the quantity of merchantable walnuts that move in the channels of domestic commerce to not less than twenty-six thousand (26,000) tons and not more than thirty thousand (30,000) tons;

8. That there exists a surplus to the extent of thirty percent (30%) of the amount of merchantable walnuts produced during the current year, and that the salable percentage of merchantable walnuts should be seventy percent (70%);

9. That the method provided in this Order for the control and disposition of such surplus and for equalizing the burden of such surplus elimination, and for control among the producers and handlers of said commodity, will tend to reestablish prices to farmers at a level that will give said commodity a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of said commodity in the base period, and will equalize the burden of such surplus elimination and control among the producers and handlers thereof;

10. That the expenses which will necessarily be incurred by the Control Board during the crop year ending August 31, 1936, for the maintenance and functioning of such Control Board, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of walnuts received, handled, held, or disposed of by such Control Board for the benefit or account of persons other than handlers subject to this Order, will amount to forty-five thousand dollars (\$45,000), and the pro rata share thereof, of each handler, is nine cents (9¢) for each one hundred (100) pounds of walnuts handled by him;

11. That this Order and all the terms and conditions thereof will tend to effectuate the declared policy of Title I of said Act with respect to walnuts produced in the States of California, Oregon and Washington, and will protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish, in subsection (1) of section 2 of said Title I, by securing a gradual correction of the current level at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in the domestic and foreign markets; and (b) authorizing no action which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in said subsection (1) of section 2 of said Title I;

12. That this Order is limited in its application to the smallest regional production area of said commodity which is practicable and consistent with carrying out the declared policy of Title I of the said Agricultural Adjustment Act;

13. That the issuance of several Orders, applicable to regional production areas of said commodity, would not effectively carry out the declared policy of said Title I;

14. That there are no differences in the production and marketing of said commodity in the production area covered by this Order that make necessary different terms applicable to different parts of such area; and

WHEREAS, the Secretary finds:

1. That this Order regulates the handling of said commodity in the same manner as, and is made applicable only to persons in the respective classes of industrial and commercial activities, specified in a marketing agreement, upon which a hearing was held on September 20, 21, 23, 24, 25 and 26, 1935.

2. That handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping said commodity or product thereof) of not less than fifty percent (50%) of the volume of said commodity covered by this Order which is produced within the production area defined in this Order have signed a marketing agreement, entered into pursuant to Section 8b of said title, which regulates the handling of said commodity in the same manner as this Order regulates it.

3. That the issuance of this Order is approved or favored by at least two-thirds (2/3) of the producers, by volume, who, during the period from September 1, 1934, to August 1, 1935, (which the Secretary hereby deter-

mines to be a representative period), have been engaged within the production area specified in this Order in the production for market of said commodity.

Now, therefore, it is ordered by the Secretary, acting under the authority vested in him as aforesaid, that the handling of said commodity in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity, from and after the date herein specified by the Secretary, shall be in conformity to and in compliance with the terms and conditions of this Order.

ARTICLE I -- DEFINITIONS

Section 1. As used in this Order, the following terms have the following meanings:

1. "Secretary" means the Secretary of Agriculture of the United States of America.
2. "Packer" means any processor or distributor of unshelled walnuts.
3. "Processor" means any person packing and handling unshelled walnuts.
4. "Distributor" means any person, other than a processor, handling unshelled walnuts which have not been subjected, in the hands of a previous holder, to compliance with the surplus control provisions hereinafter contained.
5. "Person" means individual, partnership, corporation, association, or any other business unit.
6. "To pack" means to bleach, clean, grade, or otherwise prepare for market in any manner whatsoever.
7. "To handle" means to sell for shipment in, to ship in, or in any other way to put into the channels of trade in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce.
8. "To ship" means to convey or cause to be conveyed by railroad, truck, boat or any other means whatsoever, but not as a common carrier for another person.
9. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.
10. "Walnuts" means only walnuts of the "English" (*Juglans Regia*) varieties grown in the States of California, Oregon, or Washington. "Merchantable walnuts" means all unshelled walnuts meeting the specifications set forth in Exhibit A attached hereto or such other specifications as may be prescribed by the Control Board and approved by the Secretary pursuant to section 1 of article III and meeting the requirements of the Federal Standard. "Cull walnuts" means all lots of

unshelled walnuts which are below the Federal Standard and which cannot be brought up to that standard by standard commercial practices.

11. A "Pack" means a specific commercial classification according to size of merchantable walnuts packed in accordance with the specifications given in Exhibit A attached hereto or such other specifications as may be prescribed by the Control Board and approved by the Secretary pursuant to section 1 of article III.

12. A "Quality" means the classification of any pack of walnuts according to appearance, edibility, color of kernels or such other characteristics as are employed in standard commercial practices, in accordance with the specifications given in Exhibit B attached hereto, and/or other specifications as may be hereafter prescribed by the Control Board and approved by the Secretary.

13. "Credit value" means that value fixed by the Control Board pursuant to section 1 of article IV for crediting the surplus walnuts of any pack and quality delivered to the Control Board.

14. "Sheller" means any person engaged in the business of shelling walnuts for any purpose.

15. "Federal Standard" means the regulation issued by the Secretary of Agriculture on August 22, 1932, or any future amendment thereof, said regulation now providing:

****on and after September 1, 1933, the following standards, indicating percentage of deteriorated or unsound nuts, will be used in judging legality of nuts under the terms of the Federal Food and Drugs Act:

| Variety | Unshelled Per Cent |
|-------------------|-----------------------|
| Walnuts | 10 " |

16. "Control Board" or "Walnut Control Board" means the Control Board established pursuant to article II of this Order.

17. "Crop year" means the twelve months from September 1 to the following August 31, both inclusive.

ARTICLE II -- CONTROL BOARD

Section 1. Membership and Organization. -- 1. A Control Board is hereby established consisting of nine (9) members. The original members and their respective alternates shall be as follows:

- (1) H. C. Sharp, whose alternate is A. J. McFadden.
- (2) Bert Katz, whose alternate is Walter Rothchild.

- (3) C. Thorpe, whose alternate is W. T. Webber.
- (4) Neil Harrison, whose alternate is Philip Bancroft.
- (5) A. W. Porter, Jr., whose alternate is Frank A. Leib.
- (6) R. W. Miller, whose alternate is W. Charles Anderson.
- (7) F. C. Riggs, whose alternate is R. A. Duncan.
- (8) C. Trunk, whose alternate is John E. Trunk.
- (9) F. R. Wilcox, whose alternate is L. D. Batchellor.

The aforesaid members shall hold office for a term ending with the first Monday in April, 1936, and until their successors are selected and qualified.

2. The successors to the above-named members and their respective alternates shall be selected by the Secretary, and the successors to the first eight (8) members above-named and their respective alternates shall be selected by the Secretary from the respective nominees of groups hereinafter designated to make nominations. Nominations shall be made in the following manner: The cooperative packers, doing business within the State of California, as a group, may nominate four (4) persons as successors to the member and alternate first above-named; all packers, other than the cooperative packers, doing business within the State of California, as a group, may nominate four (4) persons as successors to the member and alternate second above-named; a group of packers doing business within the State of California who, during the preceding crop year, handled more than fifty (50) percent of the walnuts packed within the State of California, and subjected to surplus control, as a group, may nominate four (4) persons as successors to the member and alternate third above-named; those growers of walnuts whose orchards are located in California and who market their walnuts through cooperative packers, as a group, may nominate four (4) persons as successors to the member and alternate fourth above-named; all other growers whose orchards are located in California, as a group, may nominate four (4) persons as successors to the member and alternate fifth above-named; those growers whose orchards are located in California and whose walnuts were marketed during the preceding year through the packer-group which handled more than fifty (50) percent of the walnuts packed within the State of California, and subjected to surplus control, as a group, may nominate four (4) persons as successors to the member and alternate sixth above-named; the packers whose plants are located within the States of Washington and Oregon, as a group, may nominate four (4) persons as successors to the member and alternate seventh above-named; the growers whose orchards are located within the States of Washington and Oregon, as a group, may nominate four (4) persons as successors to the member and alternate eighth above-named; the members of the Control Board selected by the Secretary from the respective groups herein designated to make nominations may submit nominations as successors to the member and alternate last above-

named. If any of the first eight (8) groups above designated to make nominations fail to submit nominees in the number above specified on or before March 20 of any year, the Secretary may select the member or alternate without nominations; if nominations for the ninth member or alternate are not submitted on or before April 15 of any year, the Secretary may select such member or alternate without nomination.

3. Members of the Control Board other than the members herein designated shall be selected annually for a term of one (1) year beginning with the first Tuesday after the first Monday in April, and shall serve until their respective successors shall be selected and shall qualify. Methods for the nomination of members of the Control Board, which shall assure to all packers and growers who are eligible to participate in such nominations adequate opportunity to suggest candidates, and to indicate preferences for nominees, shall, from time to time be prescribed by the Secretary. In the selection of the packer-nominees, the voting shall be weighted according to the proportionate tonnage that each packer packed during the crop year next preceding the year of such selection. In the selection of grower-nominees, each bona fide grower eligible under the rules prescribed by the Secretary shall be entitled to one (1) vote. In the selection of such grower-nominees, any bona fide cooperative packer shall be entitled to cast all the votes to which its members may be entitled. Any person selected as a member or alternate of the Control Board shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representatives.

4. An alternate for a member of the Control Board selected in the manner prescribed in section 2 shall act in the place and stead of such member (1) in his absence, or (2) in the event of his removal, resignation, or disqualification, until a successor for his unexpired term has been selected.

5. In the event any member of the Control Board and his alternate are both unable to attend a meeting of the Control Board, any alternate for any other member nominated by the same group that nominated the absent member may serve in the place and stead of the absent member and his alternate, or in the event such other alternate cannot attend, or there is no such other alternate, such member or, in the event of his disability or a vacancy, his alternate may designate, subject to the approval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place and stead of such member. For the purposes of this subsection a cooperative packer group and a cooperative grower group in the same state shall be considered the same group.

6. To fill any vacancy occasioned by the removal, resignation, or disqualification of any member of the Control Board, a successor for his unexpired term shall be selected in the manner indicated in paragraph 2 hereof within thirty (30) days after such vacancy occurs. If a nomination is not made within such thirty (30) days, the Secretary may select a member to fill such vacancy.

7. The members of the Control Board shall serve without com-

pensation, but shall be allowed their necessary expenses, except that the last named member, and his successor, and his alternate shall also be entitled to a reasonable compensation to be fixed and paid by the Control Board, subject to the approval of the Secretary.

8. The members of the Control Board shall select a chairman from their membership and all communications from the Secretary may be addressed to the chairman at such address as may from time to time be filed with the Secretary. The Board shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The Board shall give to the Secretary or his designated agent and representatives the same notice of meetings of the Control Board as is given to members of the Board.

Sec. 2. Powers. The Control Board shall have the following powers:

1. To administer, as hereinafter specifically provided, the terms and provisions hereof.
2. To make, in accordance with the provisions hereinafter contained, administrative rules and regulations.
3. To receive, investigate, and report to the Secretary of Agriculture complaints of violations of this Order.
4. To recommend to the Secretary of Agriculture amendments to this Order.

Sec. 3. Duties. The duties of the Control Board shall be as follows:

1. To act as intermediary between the Secretary and any packer.
2. To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary.
3. To furnish to the Secretary such available information as he may request.
4. To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees.
5. To perform such duties in connection with the administration of section 32 of the Act to Amend the Agricultural Adjustment Act, and for other purposes, Public No. 320, approved by the President August 24, 1935, as may from time to time be assigned to it by the Secretary.

Sec. 4. Procedure. 1. All decisions of the Control Board, except where otherwise specifically provided, shall be by a majority vote of the members who have qualified by filing their written acceptance and who are eligible to vote.

2. The Control Board may provide for voting by mail or telegram upon due notice to all members, and when any proposition is submitted for voting by such method, one (1) dissenting vote shall prevent its adoption until submitted to a meeting of the Control Board.

3. The members of the Control Board (including successors, alternates, or other persons selected by the Secretary), and any agent or employee appointed or employed by the Control Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the Control Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

Sec. 5. Funds. All funds received by the Control Board pursuant to any provision of this Agreement shall be used solely for the purpose therein specified and shall be accounted for in the following manner:

1. The Secretary may require the Control Board and its members to account for all receipts and disbursements.
2. Upon the removal or expiration of the term of office of any member of the Control Board, such member shall account for all receipts and disbursements made to and by him, and shall deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and/or claims vested in such member pursuant to this Order.

ARTICLE III -- CONTROL OF DISTRIBUTION

Section 1. Authorized Packs. -- Except as otherwise provided in article VII hereof for the sale of cull walnuts, no packer shall handle any unshelled walnuts other than merchantable walnuts, and no packer shall handle walnuts except those packed in accordance with the pack specifications contained in Exhibit A hereto attached or in accordance with such other pack specifications as the Control Board, on application of any packer, and with the approval of the Secretary, may prescribe. Walnuts meeting such special pack specifications and meeting the requirements of the Federal Standard shall be deemed to be merchantable walnuts.

Sec. 2. Salable Percentage and Surplus Percentage. -- On the basis of total carry-over, estimated consumptive demand for merchantable walnuts, and estimated production of merchantable walnuts, the salable percentage for the crop year September 1, 1935, to August 31, 1936, shall be seventy per cent. The Secretary may, at any time on request of the Control Board (or if the Control Board shall refuse so to request, then after reasonable notice and hearing by the Secretary on request of two

or more packers who have handled during the preceding crop year at least ten (10) per cent of the total tonnage handled by all packers during such crop year), and after a finding of fact that the merchantable walnuts available for sale will not be sufficient to supply the consumptive demand, increase the said salable percentage to conform with such new relation as may be found to exist between consumptive demand and production. Thirty per cent, being the difference between the salable percentage and 100 per cent, shall be the "surplus percentage" for said crop year. A quantity equal to the surplus percentage of any lot of merchantable walnuts shall be the surplus walnuts.

Sec. 3. Estimates of Carry-over, Consumptive Demand and Production for Succeeding Years. -- As a basis for recommending amendments to the foregoing section for application to succeeding years, the Control Board shall estimate, not later than September 1 of each year, the quantity of merchantable walnuts to be produced during the coming crop year, herein referred to as the "estimated production"; such estimate to be approved by at least a two-thirds vote of the Control Board, and shall, likewise, estimate the total consumptive demand in the United States for merchantable walnuts for the coming year (on the basis of prices not exceeding the fair exchange value as defined in the Act), such estimate to be approved by at least a two-thirds vote of the Control Board, and shall, likewise, ascertain or estimate the total carry-over of merchantable walnuts from preceding crop years held by packers on August 1 preceding such crop year. The Control Board shall then make a report thereon to the Secretary with a recommendation of the salable percentage to be fixed for the coming crop year by amendment to section 2 hereof, pursuant to the terms of the Act.

Sec. 4. Report of Carry-over. -- Every packer, on or before August 15 of each year after 1935, in order to facilitate the administration of the terms and conditions of this Order, shall file with the Control Board a sworn statement of the merchantable walnuts held by him on the first day of that month, showing the quantity, pack, quality and location thereof.

Sec. 5. Individual Supply. -- The individual supply of merchantable walnuts for each processor shall be, at any time during the crop year, the merchantable walnuts packed by him during such crop year up to that time, and, for each distributor, all merchantable walnuts acquired during the crop year up to that time and which have not been subjected, in the hands of a previous holder, to compliance with the surplus control provisions of this Order.

Sec. 6. Quota for handling not to be exceeded. -- No packer shall exceed his quota which is hereby fixed for him by the Secretary by handling, (except as provided in sections 9 and 12 of this article), any merchantable walnuts, except on condition that before shipment thereof he shall deliver to the Control Board the surplus percentage of each pack and quality of such packer's individual supply to be so handled plus the surplus walnuts referable thereto.

Sec. 7. Delivery of Surplus to Control Board. -- Every packer shall deliver to the Control Board as trustee, at such places as the

Control Board may designate, the surplus percentage of each pack and quality of the individual supply handled or to be handled by such packer plus the surplus walnuts referable thereto. Such packer shall be credited for the respective packs and qualities so delivered with the credit values thereof as fixed by the Control Board, with the approval of the Secretary, pursuant to section 1 of article IV. A packer may substitute an equal weight of merchantable walnuts of any pack and quality for merchantable walnuts theretofore delivered by such packer to the Control Board and still held unsold by the Control Board. Upon such substitution, if the credit value of the pack and quality delivered to the Control Board is less than the credit value of the pack and quality returned by the Control Board to the packer, the difference shall be paid in cash to the Control Board by the packer; if more, the difference shall be credited to the packer by appropriate adjustment in credit value for the surplus walnuts delivered by such packer. Any such money paid to the Control Board, and not refunded as herein provided, or released under the provisions of section 9, shall be considered as proceeds from the sale of surplus walnuts, except that it shall be held undistributed by the Control Board until the end of the crop year. If, upon a substitution, the credit value of the walnuts delivered by a packer exceeds the credit value of those returned to him by the Control Board, and such packer has previously paid cash representing the difference in values of walnuts, theretofore exchanged, he shall be refunded therefrom such amount as may be in excess of the amount necessary to maintain his total credit for all the surplus walnuts he is required to deliver. All costs of such substitution shall be borne by the packer requesting the substitution.

Sec. 8. Additional Requirements as to Surplus Walnuts. No packer who in any succeeding year has a carry-over from which he has not deducted and delivered to the Control Board the surplus percentage shall handle such walnuts except on condition that before shipment thereof he shall deliver to the Control Board the surplus walnuts referable to any quantity handled or to be handled, or the credit value thereof, as determined for the year in which such walnuts were produced. Such surplus walnuts and such cash payments so delivered or paid shall be subject to the same terms and conditions as are applicable under sections 7 and 9 hereof to surplus walnuts and cash payments of the preceding crop year,

Sec. 9. Sale of Surplus by Individual Packer. At any time before December 31 of any year, any packer, having sold or contracted to sell any part or all of his surplus walnuts, shall be entitled to have redelivered to him such surplus walnuts so sold or contracted for sale out of those previously delivered by him and still held unsold by the Control Board. Simultaneously with the redelivery of such walnuts by the Control Board to the packer, the packer shall pay to the Control Board the credit value thereof. Such payment or a ratable proportion thereof (determined by relative weights) shall be refunded to the packer upon delivery by him to the Control Board, at any time prior to January 15 of the same crop year, of a quantity of merchantable walnuts of the same pack and quality, to replace in whole or in part any lot of surplus walnuts theretofore sold by him; or, in the event of such delivery to the Control Board of walnuts of a different pack and quality, such refund

shall be made after appropriate adjustment as required by Section 7 hereof for difference in credit value of walnuts exchanged.

Sec. 10. Adjustment of Surplus Accounts upon Increase of Salable Percentage. Upon any increase in the salable percentage, and corresponding decrease in the surplus percentage pursuant to section 2 hereof, the Control Board shall release to each packer, at his option, such walnuts theretofore delivered by him and/or such cash thereafter paid by him, and make such other adjustment in his credits, as will cause each packer's surplus account to conform to the reduced surplus percentage and to reflect any exchange made by such packer.

Sec. 11. Disposition of Cash Deposits. Any money received by the Control Board, as specified in sections 8 and 9, and remaining in its possession on or after January 15 of the current crop year, shall be used by said Control Board to purchase, at the applicable credit values, from any packers unsold walnuts held by them within their salable percentage of merchantable walnuts (as to which the surplus percentage or credit value thereof has been or will be delivered to the Control Board). If the fund is insufficient to purchase all of the walnuts remaining within the salable percentage of all such packers, the Control Board shall offer to purchase such walnuts ratably from such packers in proportion to their said holdings on date of offer and at the then values fixed by the Control Board, with the approval of the Secretary, for the credit of surplus walnuts as provided in section 1 of article IV. In the event the salable percentage should be increased after the purchase by the Control Board of walnuts from the salable percentage of the packers, as herein provided, and there should not remain in the possession of said Control Board cash deposits in a sum sufficient to make refunds in accordance with section 10 hereof, the packers by whom such walnuts were sold to the Control Board shall be required to refund the proceeds thereof, ratably in proportion to the amounts of their respective sales, to the extent necessary to refund to the Control Board a total amount sufficient to enable the Control Board to make the refunds required by said section 10, and the Control Board shall redeliver to such packers the walnuts purchased by such refunded proceeds, or walnuts of equivalent credit value. All purchases of walnuts by the Control Board pursuant to the terms of this section shall be subject to the conditions of refund as above provided. Any cash deposits that may remain at the close of the crop year over and above those used for completed purchases as herein provided shall become part of the holdings of the Control Board in the same manner and for the same purposes as the proceeds of surplus walnuts disposed of by said Control Board.

Sec. 12. Postponement of Settlement for Surplus upon Filing Bond. Compliance by any packer with the requirements of sections 6, 7, and 9 of this article as to the selling of surplus walnuts, or the times when he shall deliver to the Control Board surplus walnuts or shall pay to it the credit value of sales thereof, shall be deferred until December 31 of each crop year upon his executing and delivering voluntarily to the Control Board, before he handles any walnuts of such crop year, a written undertaking to deliver, not later than December 31, the surplus percentage of his individual supply of mor-

chantable walnuts, or the credit value thereof, in accordance with the requirements of this Order and any state agreement that may be in force, and a bond or bonds with a surety or sureties acceptable to the Control Board, in the penal amount or amounts stated below, conditioned upon full compliance with such undertaking. Such bond or bonds shall be in such penal amount or amounts that the aggregate thereof shall at all times equal the credit value of the surplus percentage of the entire individual supply already packed by the packer filing same. The bond first delivered shall be in a penal amount equal to at least twenty-five (25) percent of the amount estimated by the Control Board, or such agent or employee as it shall designate, as the credit value of the surplus percentage of the entire individual supply to be packed during such crop year by the packer filing same, and such additional bonds shall be executed and delivered from time to time as will meet the requirements hereinabove contained. Should any packer fail to deliver such additional bonds as may be required, the privileges hereunder shall cease. The cost of such bond shall be borne by the packer delivering same.

ARTICLE IV -- CREDIT VALUES OF WALNUTS DELIVERED TO THE CONTROL BOARD

Section 1. Credit Values. The Control Board shall in 1935 within five (5) days after the effective date of this Order, and thereafter on or before October 15 of each year, establish, subject to the approval of the Secretary, credit values for each pack and quality of merchantable walnuts, including such special packs as may be prescribed pursuant to section 1 of article III. The establishment of credit values shall require a vote of at least two-thirds (2/3) of the members of the Control Board. To aid the Secretary in determining whether to grant or withhold such approval, the Control Board shall furnish to the Secretary the data upon which it acted in establishing such credit values and such other data pertaining thereto as the Secretary may request. All merchantable walnuts delivered to the Control Board shall be credited to the packer delivering same at the credit values so fixed. Such credit values shall provide reasonable differentials for the different packs and qualities, such as will reflect the normal differences in market prices thereof. Each packer shall also be credited with any money payments made by him in accordance with the provisions of sections 7, 8, and 9 of article III. The credits herein specified shall be made for the purpose of determining the interest of each packer in the holdings of the Control Board.

Sec. 2. Interest of Packers in Holdings of Control Board. The equitable interest of each packer in the holdings of the Control Board shall be in the proportion of the net credits of such packer to the total net credits of all packers. For the purpose of this section, "holdings of the Control Board" means the merchantable walnuts held by or for it and the net proceeds from the sale, exchange or other disposition thereof by the Control Board, and the cash deposited with the Control Board by the packers pursuant to section 8 of article III hereof, and the cash deposited with the Control Board by the packers pursuant to section 7 of article III hereof, which has not been refunded or re-

leased to the packers before the end of the crop year, and the cash deposited with the Control Board by the packers pursuant to section 9 of article III hereof as the proceeds of the sale by the packers of surplus walnuts, and unexpended by the Control Board at the end of the crop year; but shall not include such moneys, if any, as may be received by the Control Board as benefit payments or indemnities in connection with the encouragement of exportation or encouragement of domestic consumption pursuant to the provisions of section 32 of the Act to amend the Agricultural Adjustment Act and for other purposes, Public No. 320, 74th Congress, approved by the President August 24, 1935. The Control Board shall distribute from time to time the cash "holdings of the Control Board" ratably to the packers in accordance with their respective interests therein.

ARTICLE V -- DISPOSAL OF SURPLUS

Section 1. Disposal of Surplus. The Control Board shall have power and authority from time to time to sell or dispose of any and all of its holdings of merchantable walnuts, upon the best terms and for the best prices obtainable consistent with the ultimate disposition of the surplus, subject to the following conditions:

1. No such merchantable walnuts shall be sold as unshelled walnuts (except to shellers with proper safeguards to prevent their entry into the channels of trade as unshelled walnuts) in the United States, except that the Control Board may, in its discretion, distribute within the United States to charitable institutions for charitable purposes surplus walnuts as donations or at such prices as the Control Board may determine, with proper safeguards to prevent such walnuts thereafter entering the channels of trade.

2. In case such merchantable walnuts are sold for export to any foreign country, such sales shall be made only on execution of a proper agreement to prevent importation into the United States, and in case of export to Canada and Mexico they shall be sold only on the basis of a delivered price, duty paid.

3. The Control Board shall not, prior to January 15 of any crop year, dispose of (other than by release to the respective packers) more than fifty (50) percent of the surplus walnuts delivered to it.

Sec. 2. Release of Surplus Walnuts to Packers on September 1.

If the combined carry-over and estimated production for any coming crop year be less than the estimated consumptive demand in the United States for such year, the Control Board shall release proportionately to each packer on September 1 of such year, insofar as its holdings permit, such additional quantity of the actual surplus merchantable walnuts delivered by each packer, and merchantable walnuts equivalent to the amount represented by cash payment made by each packer to the Control Board in lieu of the delivery of surplus walnuts, to and still held unsold by the Control Board as, when added to the combined carry-over and estimated new crop, will be sufficient to supply the estimated consumptive demand for the coming year. In no case shall the Control Board release a greater quantity of its holdings than is represented by the

difference between the estimated consumptive demand and the combined carry-over and estimated new crop. In the event the particular surplus walnuts previously delivered by any individual packer and held unsold by the Control Board are less than the quantity which such packer is entitled to have released to him by reason of increase in the salable percentage or by reason of release of the carry-over, in whole or in part, as provided in this section, such deficit shall be made up by delivering to such packer from other stocks held unsold by said Control Board merchantable walnuts of packs and qualities the same as or equivalent to the packs and qualities of surplus walnuts which had been delivered by that packer and disposed of by the Control Board.

ARTICLE VI -- CERTIFICATION OF SHIPMENTS

Section 1. Certification of Shipments. Every packer, at his own expense, shall obtain a certificate for each lot of merchantable walnuts handled by him and for each lot of merchantable walnuts which he delivers to or holds for the Control Board. Said certificates shall be issued by inspectors designated by the Control Board. All such certificates shall show, in addition to such other requirements as the Control Board may specify, the identity of the packer, the quantity, quality and pack of merchantable walnuts in such lot and that the walnuts covered by such certificate conform to the Federal Standard. Such certificate shall be issued only upon a showing that the packer requesting same has delivered or otherwise accounted for his surplus walnuts in accordance with the terms of this Order: Provided, That during the portion of the crop year prior to December 31 such certificate shall be issued without such showing to any packer who has filed a bond in accordance with the terms of section 12 of article III.

Sec. 2. Copies of Certificate. Copies of each such certificate shall be furnished by the inspector to the packer and the Control Board, and each lot handled or delivered to the Control Board shall be so marked as to indicate that same has been inspected as herein required.

ARTICLE VII -- SALE OF CULL WALNUTS

Section 1. Sale of Cull Walnuts. Anything herein to the contrary notwithstanding, any packer may sell or deliver cull walnuts to any sheller; Provided, That, at the time each such delivery is made, the packer handling such walnuts shall furnish the Control Board with a certificate, in form specified by the Control Board, detailing the amount of cull walnuts and to whom sold and delivered.

ARTICLE VIII -- ASSESSMENTS FOR EXPENSES

Section 1. Expenses. Every packer shall pay to the Control Board upon demand such packer's pro rata share, as approved by the Secretary, of the expenses in the amount of forty-five thousand (\$45,000) dollars, (which amount the Secretary has found will necessarily be incurred by the Control Board during the crop year ending August 31, 1936),

or expenses in such other amount as the Secretary may later find will necessarily be incurred by the Control Board during the said crop year, for the maintenance and functioning of the Control Board during said crop year as set forth in this Order. Each packer's share of such expenses shall be that proportion thereof which the total quantity of merchantable walnuts handled by the packer within his salable percentage during said year is of the total quantity of merchantable walnuts handled by all the packers within their salable percentages during said year, and such pro rata share is hereby approved by the Secretary. The initial assessment upon each packer shall be nine (9) cents per bag of one hundred (100) pounds, or its equivalent, handled by said packer, and said initial assessment shall be adjusted from time to time by the Control Board, with the approval of the Secretary, in order to provide funds sufficient in amount to cover any later finding by the Secretary of estimated expenses or the actual expenses of the Control Board during said crop year.

Subsequent to the crop year ending August 31, 1936, every packer shall pay to the Control Board, upon demand, such packer's pro rata share, as approved by the Secretary, of such expenses as the Secretary may find will necessarily be incurred by the Control Board, during any period specified by the Secretary, for the maintenance and functioning of the Control Board as set forth in this Order.

ARTICLE IX -- BOOKS AND RECORDS

Section 1. Information to Secretary. All packers shall severally from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which this Order has been carried out or has effectuated the declared policy of the Act, and with such other information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemption from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary.

Sec. 2. Examination of Books and Records. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this article, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary or his representatives may examine such books, papers, records, copies of income tax reports, accounts, correspondence, contracts, documents, or memoranda as he deems relevant and which are within the control (1) of any packer from whom such report was requested, or (2) of any person having, either directly or indirectly, actual or legal control of or over such packer, or (3) of any subsidiary of any such packer or person.

ARTICLE X -- LIABILITY OF CONTROL BOARD MEMBERS

Section 1. Liability. No member of the Control Board nor any employee thereof shall be held responsible individually in any way whatsoever to any packer or any other person for errors in judgment,

mistakes, or other acts either of commission or omission by such member or employee, except for acts of dishonesty.

ARTICLE XI -- SEPARABILITY

Section 1. Separability. If any provision of this Order is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this Order and/or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

ARTICLE XII -- DEROGATION

Section 1. Derogation. Nothing contained in this Order is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (1) to exercise any powers granted by the Act or otherwise, and/or (2) in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XIII -- AMENDMENTS

Section 1. Proposals. Amendments to this Order may, from time to time, be proposed by the Control Board.

ARTICLE XIV -- DURATION OF IMMUNITIES

Section 1. Duration of Immunities. The benefits, privileges, and immunities conferred by virtue of this Order shall cease upon its termination except with respect to acts done under and during the existence of this Order, and benefits, privileges, and immunities conferred by this Order upon any person shall cease upon its termination as to such person, except with respect to acts done under and during the existence of this Order.

ARTICLE XV -- AGENTS

Section 1. Agents. The Secretary may by a designation in writing name any person, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this Order.

ARTICLE XVI -- EFFECTIVE TIME AND TERMINATION

Section 1. Effective Time. This Order shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified.

Section 2. Termination. 1. The Secretary may at any time terminate this Order by giving at least one (1) day's notice by means of a press release or by any other means which the Secretary may determine.

2. The Secretary shall terminate or suspend the operation of this Order, or of any provision thereof, whenever he finds that said Order, or such provision thereof, obstructs or does not tend to effectuate the declared policy of the Act.

3. The Secretary shall terminate this Order at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of walnuts who during the preceding crop season, have been engaged in the production for market of walnuts in the States of California, Oregon, and Washington: Provided, That such majority have during such period produced for market more than fifty (50) percent of the volume of such walnuts produced for market within said states, but such termination shall be effective only if announced on or before August 1.

4. This Order shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.

Section 3. Proceedings after Termination. 1. Upon the termination of this Order, the members of the Control Board then functioning shall continue as joint trustees, for the purpose of this Order, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Said trustees (a) shall continue in such capacity until discharged by the Secretary, (b) shall from time to time account for all receipts and disbursements and/or deliver all funds and property on hand, together with all books and records of the Control Board and the joint trustees, to such person as the Secretary shall direct, and (c) shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and/or claims vested in the Control Board or the joint trustees pursuant to this Order. Any funds collected for expenses pursuant to article VIII of this Order and held by such joint trustees or such person, over and above amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties hereunder, shall as soon as practicable after the termination of this Order be returned to the packers pro rata in proportion to their contributions made thereto pursuant to this Order. Each and every order, determination, decision or other act of such joint trustees shall be by a two-third (2/3) vote thereof.

2. Any person to whom funds, property and/or claims have been delivered by the Control Board or its members upon direction of the Secretary as herein provided shall be subject to the same obligations and duties with respect to said funds, property and/or claims as are

hereinabove imposed upon the members of said Board or upon said joint trustees.

IN WITNESS WHEREOF, the Secretary of Agriculture does hereby execute in duplicate and issue this Order in the City of Washington, District of Columbia, on the 11 day of October 1935, and, pursuant to the provisions hereof, declares this Order to be effective on and after 12:01 a.m. Eastern Standard Time, October 15, 1935.

H. A. Wallace

Secretary of Agriculture

EXHIBIT A

PACK SPECIFICATIONS FOR MERCHANTABLE WALNUTS

California Packs

No. 1 Grade or No. 1 Soft Shell.--Walnuts produced from seedling trees and/or walnuts not properly classified in any of the following varietal packs, and in which not over 12 percent by count pass through a round opening $7\frac{1}{4}/6\frac{1}{4}$ inches in diameter.

Large Budded.--Walnuts produced from trees of the Placentia Perfection and/or closely similar varieties, and in which not over 12 percent by count pass through a round opening $7\frac{9}{16}/6\frac{1}{4}$ inches in diameter.

Medium Budded.--Walnuts produced from trees of the Placentia Perfection and/or closely similar varieties, and all of which pass through a round opening $7\frac{9}{16}/6\frac{1}{4}$ inches in diameter and in which not over 12 percent by count can pass through a round opening $6\frac{9}{16}/6\frac{1}{4}$ inches in diameter.

Large Concords.--Walnuts of the Concord variety and of the same size specifications as given for Large Budded.

Fancy Concords.--Walnuts of the Concord variety, all of which pass through a round opening $7\frac{9}{16}/6\frac{1}{4}$ inches and not over 12 percent by count, pass through a round opening $7\frac{1}{4}/6\frac{1}{4}$ inches in diameter.

Large Eurekas.--Walnuts of the Eureka variety and of the same size specifications as given for Large Budded.

Fancy Eurekas.--Walnuts of the Eureka variety and of the same size specifications as given for the Fancy Concord Grade.

Large Franquettes.--Walnuts of the Franquette variety and of the same size specifications as given for Large Budded.

Fancy Franquettes.--Walnuts of the Franquette variety and of the same size specifications as given for the Fancy Concord Grade.

Large Mayettes.--Walnuts of the Mayette variety and of the same size specifications as given for the Large Budded.

Fancy Mayettes.--Walnuts of the Mayette variety and of the same size specifications as given for the Fancy Concord Grade.

Large Paynes.--Walnuts of the Payne variety and of the same size specifications as given for Large Budded.

Fancy Paynes.--Walnuts of the Payne variety and of the same size specifications as given for the Fancy Concord Grade.

Oregon and Washington Packs

Oregon and Washington walnuts may be packed in any of the pack specifications above described for California walnuts, and in addition thereto, the following pack specifications which apply only to walnuts grown in Oregon or Washington.

Large Soft Shells.--Walnuts produced from seedling trees and/or walnuts not properly classified in any of the varietal packs, and in which not over 12 percent by count pass through a round opening 79/64 inches in diameter.

Fancy Soft Shells.--The same as Large Soft Shells except that all pass through a round opening 79/64 inches in diameter and not over 12 percent by count can pass through a round opening 74/64 inches in diameter.

Standard or Medium Soft Shells.--The same as Fancy Soft Shells except that all pass through a round opening 74/64 inches in diameter and not over 12 percent by count pass through a round opening 60/64 inches in diameter.

Standard or Medium Franquettes.--Walnuts of the Franquette variety and of the same size specifications as given above for Standard or Medium Soft Shells.

All of the walnuts contained in the foregoing packs shall be graded for size and culled for removal of external defects.

EXHIBIT B

CALIFORNIA QUALITY GRADES

First Quality Grade Walnuts shall contain not less than 90 percent (by count) of kernels practically free from defects and shall not contain over 4 percent (by count) of insect damaged kernels. At least 55 percent of said minimum percentage of sound kernels shall be light in color in accordance with the official color chart issued by the Walnut Control Board.

Second Quality Grade Walnuts shall contain not less than 86 percent (by count) of kernels practically free from serious defects, and shall not contain more than 4 percent (by count) of insect damaged kernels. At least 35 percent of said minimum percentage of sound kernels shall be light in color in accordance with the official color chart issued by the Walnut Control Board.

Third Quality Grade Walnuts shall include all walnuts meeting the Federal Standard and testing below the requirements for Second Quality Grade.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of First Quality Grade, all walnuts the kernels of which show the following defects shall not be considered as sound:-

Insect Damage - Kernels affected in any way by codling moth larvae, ants, moths or beetles commonly attacking stored food products, or any other insects.

Moldy Kernels - Kernels showing on their surface mold readily discernible to the eye.

Shriveled Kernels - Walnuts which contain no kernel (blanks) or in which the kernel is noticeably shrunken, leathery, tough or unpalatable, as distinguished from kernels which are plump and fully developed.

Rancid Kernels - Kernels which have a decomposed appearance or a rancid taste.

Black Kernels - Kernels as dark or darker in color than those illustrated in row "E" of the official color chart of the Walnut Control Board.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of Second Quality Grade, all walnuts showing the defects described above shall not be considered as sound, except that -

Partially Moldy Kernels - Kernels affected by white or gray mold which does not affect more than one-quarter of the entire kernel will be classed as sound, and

Partially Shriveled Kernels - Kernels which are partially shriveled but where such shrivelling does not affect more than one-quarter of the entire kernel, shall be classed as half sound; that is, two such kernels shall be counted as one sound and one defective kernel, provided, however, that in any one hundred walnuts not over twenty with kernels one-quarter or less shriveled shall be combined as 10 percent sound and 10 percent defective.

OREGON - WASHINGTON QUALITY GRADES

First Quality Grade walnuts shall contain not less than 90 percent (by count) of kernels practically free from defects and shall not contain more than one percent (by count) of insect damaged kernels. At least 55 percent of said minimum percentage of sound kernels shall be light in color in accordance with the official color chart issued by the Walnut Control Board.

Second Quality Grade walnuts shall not contain more than 2 percent (by count) of insect damaged kernels, not more than 10 percent (by count) of moldy, rancid, blank, black, or half shriveled or insect damaged kernels all combined, and not more than an additional 20 percent (by count) of kernels which are from one-quarter to one-half shriveled. Second quality grade walnuts shall also contain not less than 30 percent (by count) of kernels which, in addition to being wholly sound, are light in color in accordance with the official color chart issued by the Walnut Control Board.

Third Quality Grade walnuts shall include all walnuts meeting the Federal Standard and testing below the requirements for Second Quality Grade.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of First Quality Grade, all walnuts the kernels of which show the following defects shall not be considered as sound: -

Insect Damage - Kernels affected in any way by codling moth larvae, ants, moths or beetles commonly attacking stored food products, or any other insects.

Moldy Kernels - Kernels showing on their surface any kind or amount of mold except kernels affected by white or light gray mold which does not cover over one-quarter of the kernel.

Rancid Kernels - Kernels which have a decomposed or rancid flavor.

Shriveled Kernels - Walnuts which contain no kernel (blanks) or in which the kernel is one-half or noticeably shrunken, leathery or rough.

Kernels which are one-eighth or more shriveled, but less than one-half shriveled, shall be considered as one-half of one percent sound.

Kernels which are less than one-eighth shriveled shall be considered sound except that not over 10 percent (by count) of such defects shall be allowed.

Black Kernels - Kernels as dark or darker in color than those illustrated in row "E" of the official color chart of the Walnut Control Board.

In determining the percentage of sound kernels in a lot of walnuts for qualification as of Second Quality Grade, all walnuts showing the defects described above shall not be considered as sound, except that there shall be no limit on the percentage of kernels which are one-eighth or less shriveled and which may be counted as sound.

